



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0917]

RIN 1625-AA11

Regulated Navigation Area; Upper Mississippi River, Sabula Railroad Bridge, Mile Marker 535, Sabula, IA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard established a temporary regulated navigation area for certain navigable waters of the Upper Mississippi River under one of the navigable spans of the Sabula Railroad Drawbridge at mile marker (MM) 535. The RNA is necessary to protect persons, vessels, and the marine environment from potential hazards associated with emergency repair work to the Sabula Railroad Bridge following a vessel's allision with the bridge. The regulation applies only to southbound vessel transits through the RNA, and depending on the water flow as measured from Lock and Dam 12, this regulation either prohibits transit or establishes operating requirements unless a deviation is authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

DATES: This rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through November 30, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0917 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Kody Stitz, Sector Upper Mississippi River Prevention Department U.S. Coast Guard; telephone 314-269-2568, email Kody.J.Stitz@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Upper Mississippi River
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On September 16, 2018, a vessel allided with the Sabula Railroad Drawbridge and immediate action was needed to respond to the potential hazards associated with emergency bridge repairs. On September 28, 2018, the Coast Guard published a temporary final rule; request for comments titled Regulated Navigation Area; Upper Mississippi River, Sabula Railroad Drawbridge, Mile Marker 535, Sabula, IA (83 FR 48954). There we stated why we issued the temporary final rule, and invited comments on our proposed regulatory action related to the operational restrictions in the regulated navigation area (RNA). During the comment period that ended on October 15, 2018, we received two comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with emergency bridge repairs.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Eighth District Commander has determined that potential hazards associated with emergency bridge repairs following an allision will be a safety concern for vessels transiting southbound through the right descending span, also known as Iowa span, of the Sabula Railroad Drawbridge. This rule is necessary to protect persons, vessels, and the marine environment on the navigable waters of the Upper Mississippi River while the bridge is being repaired. The duration of this rule is intended to cover the period of emergency repairs.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our temporary final rule published on September 28, 2018. One comment was unrelated to the substance of the rule, and one comment was not in favor of the rule. The commenter not in favor of the rule disagreed that any navigation should be allowed through the right descending bank span, also known as the Iowa span, of the Sabula Railroad Drawbridge at mile marker (MM) 535 until the rest pier repairs were “substantial[ly] complet[ed].” The commenter stated that the Coast Guard failed to engage with Canadian Pacific Railway engineers to evaluate safety concerns, and expressed general dissatisfaction that the Coast Guard’s

risk analysis was not fairly balanced against the elevated risks to the bridge pier or potential impact to railroad traffic.

The Coast Guard respectfully disagrees. As a preliminary matter, our rule does provide for a prohibition of southbound navigation under the Iowa span under certain conditions. Moreover, because the emergency repairs are necessary only for the rest pier, rather than the actual bridge support piers, a total closure of waterway traffic may not be necessary under all conditions. The Coast Guard inspected the initial damage to the rest pier, and has been engaged with the bridge owner, the repair contractor, and vessel operators since the initial incident on September 16, 2018. Other than requesting a total closure of the Iowa span and expressing disagreement with the Coast Guard's rule generally, Canadian Pacific Railway did not present any facts, data, or engineering analysis to the Coast Guard to support why a total closure is necessary, or propose alternate vessel operating requirements. Although the repairs have been substantially completed, Canadian Pacific Railway engineers may contact the Sector Upper Mississippi River at any time with further information. There are no changes in regulatory text of this rule from the temporary final rule.

This rule establishes a temporary regulated navigation area from September 21, 2018 through November 30, 2018, or until the emergency bridge repairs are completed, whichever occurs first. The regulated area covers all navigable waters of the Upper Mississippi River under the right descending bank span, also known as the Iowa span, of the Sabula Railroad Drawbridge at mile marker (MM) 535. This rule applies only to southbound vessel transits through the RNA, and depending on the water flow as measured from Lock and Dam 12, this regulation either prohibits transit or establishes

operating requirements unless a deviation is authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

When the water flow rate as measured from Lock and Dam 12 is 100kcfs or greater, vessels are prohibited from transiting southbound through the RNA unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative. When the water flow rate as measured from Lock and Dam 12 is less than 100kcfs, vessels may transit southbound through the RNA only if navigating at their slowest safe speed and avoiding contact with any part of the Sabula Railroad Drawbridge and the unprotected rest pier located on the right descending side of the Sabula Railroad Drawbridge.

When the water flow rate as measured from Lock and Dam 12 is less than 100kcfs, vessels engaged in towing may transit southbound through the RNA only if the size of the tow does not exceed 15 barges, the towing vessel possesses a minimum of 250 horsepower per loaded barge in the tow, and the towing vessel uses an assist vessel of at least 1,000 horsepower when pushing three or more barges. If an assist vessel is required by this rule, the assist vessel and the towing vessel must discuss a plan to transit through the RNA before doing so and both the assist vessel and the towing vessel must be capable of continuous two-way voice communication during the transit.

The COTP or a designated representative may review, on a case-by-case basis, alternatives to the minimum operating or towing requirements set forth in this rule and may approve a deviation from these requirements should they provide an equivalent level of safety. The COTP or a designated representative may determine, on a case-by-case basis, that although the conditions triggering the RNA may be met, the current potential

hazards do not require that each requirement of the RNA be enforced and that only certain of the above-prescribed restrictions are necessary under the circumstances. The COTP or a designated representative may consider environmental factors, the water flow rate at Lock and Dam 12, mitigating safety factors, and the completion progress of the bridge repairs among other factors. The COTP or a designated representative will broadcast notice of such determination and any subsequent changes. Notice that these vessel operational conditions are anticipated to be put into effect, or are in effect, will be given by Broadcast Notice to Mariners, Local Notices to Mariners, Marine Safety Information Broadcasts, and/or actual notice, as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the limited applicability of the rule, the availability of an alternate route, and the ability of the COTP to issue a deviation

from the requirements of this rule or suspend enforcement of this rule on a case-by-case basis. This rule only affects southbound vessel transits through the RNA; northbound vessels may transit the RNA at any time without restrictions. In addition, the regulated area only covers the navigable waters under the span of the Sabula Railroad Drawbridge that was damaged in the collision, the right descending span, or Iowa span, of the bridge. Vessels may transit north or southbound through the left descending span, or Illinois span, at any time without restriction. Finally, this rule allows vessels to seek permission to transit through the RNA and/or deviate from the operating requirements, and also allows the COTP to suspend enforcement of particular provisions of the RNA under appropriate circumstances.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary regulated navigation area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act

of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175,

Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated navigation area lasting approximately two months that prohibits entry or establishes vessel operating requirements for southbound transits through the right descending span of the Sabula Railroad Drawbridge on the Upper Mississippi River while emergency repairs are made to the bridge. It is categorically excluded from further

review under paragraph L60 (d) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0917 to read as follows:

§ 165.T08-0917 Regulated Navigation Area; Upper Mississippi River, Sabula Railroad Drawbridge, Mile Marker 535, Sabula, IA.

(a) Location. The following area is a regulated navigation area (RNA): All navigable waters of the Upper Mississippi River under the right descending bank span, also

known as the Iowa span, of the Sabula Railroad Drawbridge at mile marker (MM) 535.

- (b) Effective period. This section is effective from September 21, 2018 through November 30, 2018, or until the emergency bridge repairs are completed, whichever occurs first.
- (c) Applicability. This section only applies to vessels transiting southbound through the RNA.
- (d) Regulations. (1) In accordance with the general regulations contained in 33 CFR 165.11, and 165.13, when the water flow rate as measured from Lock and Dam 12 is 100 KCFS or greater vessels are prohibited from transiting southbound through the RNA unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative.

(2) When the water flow rate as measured from Lock and Dam 12 is less than 100kcfs, vessels may transit southbound through the RNA only under the following conditions:
 - (i) Vessels shall operate at their slowest safe speed.
 - (ii) Vessels avoid contacting any part of the Sabula Railroad Drawbridge and the unprotected rest pier located on the right descending side of the Sabula Railroad Drawbridge.
- (3) When the water flow rate as measured from Lock and Dam 12 is less than 100kcfs, vessels engaged in towing may transit southbound through the RNA only under the following conditions:
 - (i) The size of the tow does not exceed 15 barges; and

- (ii) The towing vessel possesses a minimum of 250 horsepower per loaded barge in tow, and
 - (iii) When pushing more than two barges, an assist vessel of at least 1,000 horsepower must be utilized.
 - (A) Prior to entering the RNA, the assist tow vessel and the primary tow vessel shall discuss a plan to transit through the bridge, and
 - (B) Both the primary and assist towing vessel shall be capable of continuous two way voice communication while transiting through the bridge.
- (4) If an assist vessel is required under this section, before entering the RNA:
 - (i) The assist vessel and the tow vessel shall discuss a plan to transit through the bridge, and
 - (ii) Both the assist vessel and the towing vessel shall be capable of continuous two-way voice communication while transiting through the bridge.
- (5) The COTP or a designated representative may review, on a case-by-case basis, alternatives to the minimum operating or towing requirements and conditions set forth in paragraphs (d)(2)-(d)(4) of this section and may approve a deviation to these requirements and conditions should they provide an equivalent level of safety.
- (6) The COTP or a designated representative may determine, on a case-by-case basis, that although the conditions triggering the RNA may be met, the current potential hazards do not require that each requirement of the RNA be enforced and that

only certain of the above-prescribed restrictions are necessary under the circumstances. The COTP or a designated representative may consider environmental factors, the water flow rate at Lock and Dam 12, mitigating safety factors, and the completion progress of bridge the repairs among other factors. The COTP or a designated representative shall broadcast such notice of such determination and any changes under the provisions of paragraph (e).

- (e) Notice of requirements. Notice that these vessel operational conditions are anticipated to be put into effect, or are in effect, will be given by Broadcast Notice to Mariners, Local Notices to Mariners, and/or actual notice, as appropriate.

Dated: November 15, 2018.

P. F. THOMAS,

Rear Admiral, U.S. Coast Guard,

Commander, Eighth Coast Guard District.

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